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C O N F I D E N T I A L SECTION 01 OF 02 TEL AVIV 001429

SIPDIS

FOR EB/IPE SWILSON AND NEA/IPA GLOGERFO
DEPARTMENT PLEASE PASS TO USTR NOVELLI, SAUMS AND PECK

E.O. 12958: DECL: 03/08/2015

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SUBJECT: (C) GOI MOVING AHEAD WITH DATA EXCLUSIVITY
LEGISLATION

REF: A: TEL AVIV 1271 B: SAUMS-WEINSTEIN EMAIL OF

3/4/2005 (NOTAL)

Classified By: Ambassador Daniel C. Kurtzer for reasons 1.4 (b) and (d)

1. (C) This is an action request message. Please see paragraph 8.

2. (C) Summary and Comment: Post has received a clear message from Ministry of Industry, Trade and Labor (MOITL) that the GOI intends to move ahead this week to have the Knesset consider the data exclusivity legislation as part of the Economic Arrangements Law (EAL). Despite previous understandings, Israel will not wait for negotiations with USTR to conclude before moving the legislation from the Knesset Finance Committee to the plenary. The GOI claims it intends to engage in good faith with the U.S. in scheduled March 17 DVC discussions. Any amendments agreed upon during the DVC can only be added to the EAL before the March 31 deadline for passage of the law. Post recommends that when the Knesset Finance Committee votes to send the legislation to the Knesset plenary, thus voiding our agreement, we expeditiously inform the GOI that the USG is resuming consideration to move Israel to the Priority Watch List (PWL), even as we proceed with the negotiations. End Summary/Comment.

3. (C) On March 7, Minister of Industry, Trade and Labor Ehud Olmert signaled the Knesset Finance Committee to resume debate of the provisions of the EAL that relate to data exclusivity and patents in preparation for a committee vote on the law. In response, EconCouns delivered Ref B points to Yair Shiran, Director of International Agreements & Trade Policy at MOITL. EconCouns emphasized that no agreement was reached last fall during negotiations, that if the legislation moved forward before the next round of negotiations the U.S. would have to reconsider Israel's placement on the Special 301 Watch List, and that the GOI moving forward on the legislation at this time calls into question how seriously they intend to engage with the USG during DVC discussions.

4. (C) Shiran claimed that discussions by the Knesset Finance Committee do not/not violate the January 2005 agreement "because there was no vote" on the matter. (Note: The oral agreement called for Minister Olmert to "withhold from consideration and debate" the two problematic provisions of the EAL relating to data exclusivity and patents while the US side froze consideration of Israel's elevation to the PWL during the Out-of-Cycle Review (OCR). End note.)

5. (C) The GOI claims that it plans to bring new ideas to the March 17 DVC, and hopes that the U.S. will do the same. However, in the conversation with EconCouns, rather than engaging in a constructive discussion about the DVC, Shiran began to list the perceived failings of the US thus far in negotiations. Most troubling was his contention that the GOI cannot be blamed if negotiations fail to achieve a timely agreement because the USTR letter from February 18 arrived "late." (Note: No timeline was outlined during the January 2005 discussions between Minister Olmert and Ambassador Kurtzer regarding the exchange of letters. End note.)

6. (C) Reliable industry sources report that the Knesset Finance Committee was ready to take a vote Monday on the data exclusivity law, but decided to delay the vote until Thursday, March 10, 2005. Embassy contacts in the Knesset indicate that a final vote on the EAL and budget is expected to be delayed until after March 16. The legal advisor at the Ministry of Health (MoH) confirmed that the Knesset Finance Committee will have to vote on the legislation soon, so that it can be sent back to the plenary for second and third readings as part of the EAL. The final EAL must pass no later than March 31 along with the budget. The MoH also noted that it is possible, but difficult, to make amendments when the bill is being considered by the Knesset plenary. If the data exclusivity legislation passes in current form as part of the EAL, any new amendments will take at least six months to enact through the regular legislative process.

17. (C) Comment: Last week Minister Olmert stated his intention to proceed with consideration of the law despite a previous agreement to schedule March 17 negotiations. The anticipated vote by the Knesset Finance Committee to allow consideration of the bills by the Knesset plenary effectively nullifies our previous agreement. We now face the prospect of negotiating on March 17 under the threat of the GOI's timetable for passage of the bill while still delaying USG action on the OCR. If we are to be successful in getting the GOI to fulfill its IPR obligations, it is imperative that we regain the initiative in the negotiations. Not responding to the GOI puts the USG at a disadvantage in the negotiations, undermines our credibility, and makes progress at the negotiations unlikely. End comment.

18. (C) Action recommendation: Post recommends that as soon as the vote is taken by the Knesset Finance Committee, we notify the GOI that, while we are prepared to continue negotiating, the USG is also reviving consideration of the OCR that could result in immediate elevation of Israel to the Special 301 PWL.

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KURTZER